CF0000060270

C.A. 592/98

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APPEAL PRISONER

S.T.No. 230/96

No. 842 Name मोतीराम

Father's Name गंगाराम Resident ग्राम - आलोर
थाना - चन्तेवाड़ा, बस्तर

Age 27 Sentenced to आजीवन कारावास on 5-12-97

Under Section 302 I.P.C. by द्वि० अति० सत्र न्यायाधीश जगदलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 5.12.97
3. Date on which appeal sent :- 1.98
4. Whether the prisoner wished to be represented or not :- Yes / No.

No. 842 Name मोतीराम s/o गंगाराम

Continued in जिला Jail जगदलपुर

No. 828 Dated 5/11/98

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
जिला जेल एवं उपजेल
जगदलपुर

Su perintendent-Central / Distt / Sub-Jail.

Date of receipt in C. J. M. Office. 6.1.98

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 2 dated 7.1.98

Forwarded to the द्वितीय अति० सत्र न्यायाधीश महोदय, बस्तर एवं जगदलपुर

C. R. MAGISTRATE (महेन्द्र राठौर)
मुख्य न्यायिक मजिस्ट्रेट
जगदलपुर

Date of receipt in Applieate Court

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर.

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आदेश पत्रक

मामला क्रमांक CRA No 592 सन् 1998

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -
HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

23-2-2006

Shri Akhil Mishra, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the State/ respondent.

Oral judgment dictated on *Dais.*

PER L.C. BHADOO J

By this appeal under Section 374 (2) of the Cr.P.C. accused/ appellant Motiram has questioned the legality and correctness of the judgment of conviction and order of sentence dated 5-12-97 passed by learned 3rd Additional Sessions Judge, Jagdalpur in Sessions Trial No.230/96 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

Case of the prosecution is that on 1-2-96 in between 7.30 to 8 p.m. when Basram (since deceased) was going in front of the house of accused Gangaram, Gangaram and accused Motiram were hiding themselves behind the Mahua bush. When Basram reached near the

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

bush, both Gangaram and Motiram started attacking Basram with wooden plank and club. Hearing the cries of Basram, wife of Basram, Basanti and Shivram came out of the house and saw that the accused persons were assaulting the deceased. The merg intimation Ex.-P/2 was given by Shivram in the police station Dantewada. On receiving this merg intimation, S.H.O. police station Dantewada registered Crime No.14 for commission of offence under Section 302 read with Section 34 of the I.P.C., left for the scene of occurrence, after giving notice to the Panchas, prepared Panchanama Ex.-P/3 of the body of the deceased. The dead body was sent for postmortem examination to the Primary Health Centre, Dantewada where Dr. S. K. Dhagamwar conducted the postmortem on the body of the deceased and prepared the postmortem report Ex.-P/4. The wooden plank and club were sent for the doctor's opinion under Ex.-P/15 on which the doctor gave his opinion Ex.-P/5. The site plan Ex.-P/7 of the place of occurrence was prepared by the sub inspector. The plain soil and blood stained soil was taken into possession from the place of occurrence under Ex.-P/8. Based on the memorandum Ex.-P/10 the Badga was recovered at the instance of Motiram. Based on memorandum Ex.-P/12 another wooden plank was recovered at the instance of accused Gangaram under Ex.-P/13. The clothes of accused Motiram were taken into possession under Ex.-P/14. After

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

completion of the investigation, charge sheet was filed against the accused persons in the Court of Judicial Magistrate, 1st Class, Dantewada, who in turn committed the case to the Sessions Judge Jagdalpur from where learned 3rd Additional Sessions Judge, Jagdalpur received the case on transfer.

The prosecution in order to establish the charge against the accused persons examined 6 witnesses. Statement of accused Motiram was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. However, accused Gangaram expired during the pendency of Sessions Trial. After hearing Additional Public Prosecutor and counsel for the accused, learned Additional Sessions Judge convicted and sentenced the accused as mentioned in para-1 of this judgment.

We have heard learned counsel for the parties.

The homicidal death of deceased Basram is not in dispute.

As far as involvement of the accused/appellant along with Gangaram in attacking the deceased is concerned, we are of the considered opinion that in view of the above legal clinching eyewitness evidence and extra judicial confession made by the

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused, involvement of the accused/appellant in crime in question is established. PW-1 Shivram who lodged the merg intimation at the police station Dantewada has stated that he and his sister-in-law Basanti were at the residence whereas, when his brother deceased Basram was passing through the road in front of the house of the accused, accused Gangaram and Motiram were hiding themselves behind Mahua bush. When Basram reached near the Mahua bush, they, all of a sudden, appeared on the scene and started attacking Basram. On hearing scream, he along with Basanti came out of the house and saw the accused persons assaulting the deceased with a wooden plank. Same is corroborated by the evidence of PW-2 Basanti. Even she has stated that Panchayat was convened in the village in which the accused persons made extra judicial confession that they assaulted the deceased with Badga. The evidence of these witnesses stands corroborated by the medical evidence of PW-5 Dr. S.K. Dhagamwar who has stated that he examined the body of the deceased. There were, in all, 10 injuries on the body of the deceased. There was lacerated wound above the left eye. There was an abrasion near the injury No.1. There was an abrasion on the left collar bone. There was an abrasion on the right eye. There was lacerated wound on the occipital region deep up to the bone. There was another lacerated wound below the injury No.6 up to the bone

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deep. There was lacerated wound on the temporal region and the bone was fractured. There was another lacerated wound near the injury No.9. Left temporal bone was found fractured. The brain membrane were congested and clotted blood was present. The injury was caused by hard and blunt object. The death was homicidal and cause of death was hemorrhagic shock on account of injury sustained on the head. Therefore, finding of the trial Court regarding causing the death of the deceased is established.

Learned counsel for the accused/appellant argued that as per the medical evidence there was only one fatal injury on the temporal region on account of which bone was found fractured and remaining injuries were simple in nature. Accused Gangaram had already expired. From the evidence it is not clear that who caused the fatal injury and the matter started on a petty dispute regarding distribution of Tamarind fruits, therefore, intention to cause death of the deceased cannot be attributed to accused Motiram.

On the other hand, learned counsel for the State supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the evidence available on record. It is true that from the evidence it

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

is not clear that which of the accused caused the fatal injury. Accused Gangaram had already expired, there was only one fatal injury, the matter started on a petty dispute between the two close relatives, therefore, in view of the above facts, intention to cause death cannot be attributed to accused Motiram, however, knowledge can be attributed. In the circumstances, we are of the considered view that it is a fit case in which the accused should be convicted under Section 304-II of the I.P.C..

In the result, the appeal is partly allowed. The conviction and sentence imposed on the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, the accused is convicted under Section 304-II of the I.P.C. and sentenced to undergo R.I. for 10 years. It is stated that the accused/appellant is in custody since 4th February 1996, thereby he has already undergone the sentence, which has not been disputed by learned Additional Public Prosecutor for the State/respondent. Therefore, the accused/appellant be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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